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DEPARTMENT OF COMMERCE
International Trade Administration
[C-580-869]

Large Residential Washers from the Republic of Korea: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0486 or (202) 482-1391, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On December 30, 2011, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of large residential washers (washing machines) from the Republic of Korea (Korea) filed in proper form by Whirlpool Corporation (the petitioner), a domestic producer of washing machines. See “Large Residential Washers from the Republic of Korea and Mexico: Antidumping and Countervailing Duty Petitions on Behalf of Whirlpool Corporation,” dated December 30, 2011 (Korea CVD Petition). On January 5 and 6, 2012, the Department issued additional requests for information and clarification of certain areas of the Korea CVD Petition. Based on the Department’s requests, the petitioner timely filed additional information pertaining to the Korea CVD Petition on January 9, 2012 (First Supplement to the AD/CVD Petitions). The Department made an additional request for

information on January 9, 2012, to which the petitioner timely filed additional information pertaining to the Korea CVD Petition on January 11, 2012 (Second Supplement to the AD/CVD Petitions).

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended, (the Act), the petitioner alleges that producers/exporters of washing machines in Korea received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioner has filed this CVD petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and the petitioner has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate (see “Determination of Industry Support for the CVD Petition” below).

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations in Washington, DC with the Government of Korea (GOK) with respect to the Korea CVD Petition on January 12, 2012. See Memorandum to The File, “Consultations with the Government of Korea Regarding the Countervailing Duty Petition on Large Residential Washers from Korea,” dated January 17, 2012, a public document on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

Period of Investigation

The period of investigation (POI) is calendar year 2011, i.e., January 1, 2011, through December 31, 2011. See 19 CFR 351.204(b)(2).

Scope of the Investigation

The products covered by this investigation are washing machines from Korea. For a full description of the scope of this investigation, please see the “Scope of the Investigation” Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Korea CVD Petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by the close of business February 8, 2012, 20 calendar days from the signature date of this notice. All comments must be filed on the records of the simultaneously initiated Korea (A-580-868) and Mexico (A-201-841) antidumping duty investigations as well as the Korea CVD investigation. All comments and submissions to the Department must be filed electronically using Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).¹ An electronically filed document must be received successfully in its entirety by the Department’s electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (i.e., in paper form) with the Import Administration’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street

¹ See <http://www.gpo.gov/fdsys/pkg/FR-2011-07-06/pdf/2011-16352.pdf> for details of the Department’s Electronic Filing Requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

and Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information.

Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639, 644 (CIT 1988), aff'd 865 F.2d 240 (Fed. Cir. 1989).

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that washing machines constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Countervailing Duty Investigation Initiation Checklist: Large Residential Washers from the Republic of Korea (Korea CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Petitions Covering Large Residential Washers from the Republic of Korea and Mexico, on file electronically in the CRU via IA ACCESS.

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the petition with reference to the domestic like product as defined in the “Scope of the Investigation” section above. To establish industry support, the petitioner provided its shipments of the domestic like product in 2010, and compared its shipments to the estimated total shipments of the domestic like product for the entire domestic

industry. See Volume I of the petition, at 10-14; Volume II of the petition, at Exhibits 2-3, 5-8, and 9; First Supplement to the AD/CVD Petitions, at 4-8 and Exhibits A-C; and Second Supplement to the AD/CVD Petitions, at 4-5 and Exhibits Q-R. Because total industry production data for the domestic like product for 2010 is not reasonably available and the petitioner has established that shipments are a reasonable proxy for production data, we have relied upon the shipment data provided by the petitioner for purposes of measuring industry support. For further discussion, see Korea CVD Initiation Checklist, at Attachment II.

Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that the petitioner has established industry support. First, the petition established support from domestic producers accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See section 702(c)(4)(D) of the Act and Korea CVD Initiation Checklist, at Attachment II. Second, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product. See Korea CVD Initiation Checklist, at Attachment II. Finally, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See id.

The Department finds that the petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate. See id.

Injury Test

Because Korea is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioner contends that the industry’s injured condition is illustrated by reduced market share, reduced shipments, underselling and price depression or suppression, a decline in financial performance, lost sales and revenue, and an increase in the volume of imports and import penetration. See Volume I of the Korea CVD Petition, at 1-6 and 156-181; Volume II of the petitions, at Exhibits 1-4, 9, 33-38, and 49; and First Supplement to the AD/CVD Petitions, at 8-13 and Exhibits C-L. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by information reasonable available to the petitioner and meet

the statutory requirements for initiation. See Korea CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Large Residential Washers from the Republic of Korea and Mexico.

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

The Department has examined the countervailing duty petition on washing machines from Korea and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether Korean producers/exporters of washing machines receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see Korea CVD Initiation Checklist.

We are including in our investigation the following programs alleged in the Korea CVD Petition to provide countervailable subsidies to producers/exporters of the subject merchandise:

1. Daewoo Electronics Corporation (Daewoo) Restructuring
 - a. GOK-Directed Equity Infusions under the Daewoo Workout
 - b. GOK-Directed Ongoing Preferential Lending under the Daewoo Workout
2. GOK Facilities Investment Support: Article 26 of the Restriction of Special Taxation Act (RSTA)
3. Tax Reduction for Research and Manpower Development: RSTA Article 10(1)(3)

4. GOK Targeted Green “Stimulus” Subsidies
 - a. Research, Supply, or Workforce Development Investment Tax Deductions for “New Growth Engines” Under RSTA Art. 10(1)(1)
 - b. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” Under RSTA Art. 10(1)(2)
 - c. RSTA Art. 25(2) Tax Deductions for Investments in Energy Economizing Facilities
 - d. GOK Subsidies for “Green Technology R&D” and its Commercialization
 - e. Industrial Bank of Korea (IBK) Preferential Loans to Green Enterprises
 - f. Support for SME “Green Partnerships”
5. Korea Trade Insurance Corporation – Short-Term Export Credit Insurance
6. Korea Export-Import Bank – Export Factoring
7. Korea Development Bank and IBK Short-Term Discounted Loans for Export Receivables
8. GOK 21st Century Frontier and Other R&D Programs
9. Gwangju Metropolitan City Production Facilities Subsidies: Tax Reductions/Exemptions under Article 276 of the Local Tax Act
10. GOK Supplier Support Fund Tax Deduction

For a description of each of these programs and a full discussion of the Department’s decision to initiate an investigation of these programs, see Korea CVD Initiation Checklist.

Respondent Selection

The petition identifies three Korean producers that export washing machines to the United States: Samsung Electronics Co., Ltd. (Samsung), LG Electronics, Inc. (LG), and Daewoo Electronics Corporation (Daewoo). There is no information indicating that there are other Korean producers/exporters of the subject merchandise. Accordingly, the Department is selecting Samsung, LG, and Daewoo as mandatory respondents in this investigation pursuant to

section 777A(e)(1) of the Act. Interested parties may submit comments regarding respondent selection within five calendar days of publication of this notice. Comments should be filed electronically using IA ACCESS.

Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f) copies of the public versions of the Korea CVD Petition and amendments thereto have been provided to the GOK. To the extent practicable, we will attempt to provide a copy of the public version of the Korea CVD Petition to each exporter named in the petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the petition was filed, whether there is a reasonable indication that imports of allegedly subsidized washing machines from Korea materially injure, or threaten material injury to, a U.S. industry. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated. See section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305(b). On January 22, 2008, the Department published Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures (73 FR 3634). Parties wishing to participate in this investigation should ensure that

they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. See section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491 (February 10, 2011) (Interim Final Rule) and Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule, 76 FR 54697 (September 2, 2011) (Supplement) (amending 19 CFR 351.303(g)). The formats for the revised certifications are provided at the end of the Interim Final Rule and the Supplement. In this proceeding, the Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

January 19, 2012 _____
(Date)

Appendix I

Scope of the Investigation

The products covered by this investigation are all large residential washers and certain subassemblies thereof from Korea.

For purposes of this investigation, the term “large residential washers” denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs¹ designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets² designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;³ (b) a base; and (c) a drive hub;⁴ and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term “stacked washer-dryers” denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term “commercial washer” denotes an automatic clothes washing machine designed for the “pay per use” market meeting either of the following two definitions:

(1) (a) it contains payment system electronics;⁵ (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;⁶ or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,⁷ the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it

¹ A “tub” is the part of the washer designed to hold water.

² A “basket” (sometimes referred to as a “drum”) is the part of the washer designed to hold clothing or other fabrics.

³ A “side wrapper” is the cylindrical part of the basket that actually holds the clothing or other fabrics.

⁴ A “drive hub” is the hub at the center of the base that bears the load from the motor.

⁵ “Payment system electronics” denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

⁶ A “security fastener” is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a “center pin reject” feature to prevent standard Allen wrenches or Torx drivers from working.

⁷ “Normal operation” refers to the operating mode(s) available to end users (*i.e.*, not a mode designed for testing or repair by a technician).

contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

The products subject to this investigation are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

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